

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16647 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KAMLABEN W/OF KISAN MADHU GUTTE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16647 of 2003
MR SUNIL C PATEL for Petitioner No. 1
Ms P B Sheth, AGP for Respondents
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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 07/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under
under Article 226 of the Constitution of India for

appropriate writ, order or direction for quashing and setting aside an order dated 28.10.2003 passed by respondent No.2 herein under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present detenu on the grounds stated in the detention order.

2. It was alleged against the detenu that two cases of prohibition under sections 65 and 66 of the Bombay Prohibition Act, 1949 were registered before Navsari Proh. station CR Nos. 1631/03 and 1676/03 on 29.8.2003 and 4.9.2003 and that two witnesses had given statements against the detenu and, therefore, the detenu was found to be a bootlegger and hence she was ordered to be detained. The detenu has challenged the detention order on the ground that the alleged activity would not be treated to be a threat to public order or public health. It has also been contended that the names of the unnamed witnesses who had rendered their statements have not been disclosed to the detenu and, therefore, the petitioner could not effectively represent his case. The detenu has challenged the detention order on various grounds. One of the grounds raised by the detenu is that wife of the detenu has submitted representation to the District Magistrate, Navsari and it was not considered in time. Therefore, the order of detention has been challenged on the above ground along with other grounds.

3. On receipt of the petition, rule was issued and in response to the service of notice of rule, Ms P B Sheth, learned AGP appears on behalf of the respondents. I have heard the learned Advocates for the parties and have perused the papers.

4. During the course of hearing, learned Advocate for the petitioner contended that the petitioner has made representation on 1.11.2003. It can be gathered from the reply sent by the District Magistrate, Navsari dated 10.11.2003 at page 35 to the petition that it was forwarded to the State Government. The reply shows that the representation dated 1.11.2003 was received by the said office on 3.11.2003 and then it was forwarded to the State Government on 10.11.2003. There was a delay of about 7 days in forwarding the representation to the State Government. It appears that the said reply does not show any reason as to why the representation was retained by the office of the District Magistrate for nearly seven days and it has not been promptly forwarded to the State Government. It is well settled that to submit the representation against detention is a valuable

right guaranteed under Article 22 (5) of the Constitution that the representation was submitted by the detenu or someone on his behalf is considered promptly or at least within a reasonable time. In the present case, we find that the representation was retained by the District Magistrate for seven days. There is no material on record to explain the said inordinate delay. When the representation has been retained by the District Magistrate for seven days and when the said delay has not been explained, then it would mean that the representation of the detenu was not considered promptly or at least within a reasonable time. In that view of the matter, further continuance of the detention cannot be sustained in the eye of law.

5. For the foregoing reasons this petition is allowed. The impugned order dated 28.10.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msh